

**AN ORDINANCE TO AMEND SECTION 30-85 OF THE CITY OF DURHAM CODE OF ORDINANCES
REGARDING THE COLLECTION OF IMPACT FEES AND THE RETAINAGE OF A 1.0% ADMINISTRATIVE FEE
BY THE CITY- COUNTY INSPECTIONS DEPARTMENT**

WHEREAS, the City of Durham ("City") is authorized to establish and collect impact or facility fees pursuant to City Code § 115.2(a); and

WHEREAS, the City is permitted and does collect impact fees for providing streets, parks and recreation facilities, and open space pursuant to City Code §§ 30-85(b)(1) and 115.3(a); and

WHEREAS, the City-County Inspections Department incurs significant administrative costs in assessing and processing these impact fees that are not currently recouped by the City-County Inspections Department from the impact fees collected; and

WHEREAS, pursuant to City Code §§ 115.1(1) and 30-82 and G.S. 159-48(h), it is permissible to use a portion of these impact fees to fund the City-County Inspections Department's administrative costs in assessing and processing impact fees; now, therefore,

BE IT ORDAINED BY THE DURHAM CITY COUNCIL:

The Durham City Code Chapter 30, Article IV, Sec. 30-85 is hereby amended by deleting existing Sec. 30-85 in its entirety and by enacting the following new Sec. 30-85—Funds collected:

Sec. 30-85 – Funds collected

(a) *Creation of trust funds.* The impact fees collected by the city pursuant to this article shall be kept separate from other revenue of the city in a manner consistent with the Local Government Budget and Fiscal Control Act. There shall be nine trust funds, one established for each impact fee type by service zone. All impact fee funds collected shall be properly identified by the appropriate trust account.

(b) *Limitation on expenditure of funds collected.*

(1)

Funds from impact fee trust accounts shall be expended for no other purpose than capital costs for streets, parks and recreation facilities, or open space. Capital costs specifically include the administrative and legal costs associated with assessing and collecting impact fees. One percent (1.0%) of all impact fees collected shall be retained by the City-County Inspections Department as an administrative fee ("administrative fee") to reimburse the City-County Inspections Department's expenses in assessing and collecting impact fees. After collection and disbursement

of the administrative fee to the City-County Inspections Department, the remainder of the impact fee shall be deposited in the appropriate trust fund account. No funds shall be used for the performance of periodic or routine maintenance activities.

(2)

All funds shall be used exclusively within the service zone from which the funds were collected. An annual report shall be made to the city council showing where the fees have been collected and what projects have been funded with impact fee monies. The council shall consider this report and whether within each service zone the fees are being spent for the benefit of new construction within the service zone. If the council determines that this is not the case, then it shall adjust the city's capital improvements program and other projected capital expenditures to correct this condition.

(3)

Funds shall be expended in the order in which they were collected. Funds not obligated for expenditure within ten years after their collection may be returned to the feepayor, subject to subsection (e) of this section.

(c)

Disbursal of funds. Funds withdrawn from these trust accounts must be used solely in accordance with the provisions of this section. Prior to withdrawal, the city council, upon recommendation of the city manager, shall make a finding as to the connection between new construction and the proposed use of funds. The motion for each project wholly or partially financed with impact fees shall read:

"To find that (project name) is at least _____% necessitated by new construction and that up to _____% of the capital costs of that project may be paid by impact fees collected within the same service zone and collected for the same purpose."

(d)

Interest on funds. Any funds on deposit not immediately necessary for expenditure shall be invested as allowed in G.S. 159-30 for other public monies. All income derived shall be deposited in the applicable trust account.

(e)

Return of fees. If it is determined by the city that fee assessments collected pursuant to this article have not been spent or encumbered for expenditure by the end of the calendar quarter immediately following ten years from the date the fee was received, then said funds, minus the administrative fee, shall be eligible for refund to the then present owner in accordance with the following procedures:

(1)

The then present owner must petition the city manager for the refund within one year following the end of the calendar quarter immediately following ten years from the date on which the fee was received by the city.

(2)

The petition must be submitted to the city manager and must contain:

a.

A notarized sworn statement that the petitioner is the current owner of the development site;

b.

A copy of the dated receipt issued for payment of the fee;

c.

A certified copy of the latest recorded deed;

d.

A copy of the most recent ad valorem tax bill; and

e.

Such other information which may be reasonably necessary to ascertain current ownership of the development site.

(3)

Within 60 days from the date of receipt of petition for refund, the city manager shall advise the petitioner of the status of the fee requested for refund. For the purpose of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made.

(4)

When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following ten years from the date the fees were paid, the money, minus the administrative fee, shall be returned with interest at the rate of four percent per annum.

(Code 1982, § 25-5; Ord. No. 12965, § 1, 6-21-2004)